

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
TRENTON DIVISION

ABIRA MEDICAL LABORATORIES,  
LLC, d/b/a GENESIS DIAGNOSTICS,

*Plaintiff,*

V.

C.A. No. \_\_\_\_\_

BLUE CROSS AND BLUE SHIELD OF  
ILLINOIS AND THEIR AFFILIATES,  
ABC COMPANIES 1-100 AND JOHN  
DOES 1-100,

*Defendants.*

## **NOTICE OF REMOVAL**

Defendant Blue Cross and Blue Shield of Illinois, a division of Health Care Service Corporation, a mutual legal reserve company (“BCBSIL”)<sup>1</sup>, for the purpose only of removing this cause to the United States District Court for the District of New Jersey, states:

1. **State Court Action.** This action was filed on January 16, 2024 (and then resubmitted on January 17, 2024, in the Superior Court of New Jersey, Mercer County, Law Civil – Civil Part, Cause No. MER-L-001678 -23 and MER-L-000104-24, respectively (the “State Court Action”))<sup>2</sup>. Plaintiff seeks to recover payments, or underpayments, for lab testing claims to BCBSIL members. Plaintiff asserts claims against BCBSIL for breach of contract, breach of an implied covenant of good faith and fair dealing, fraudulent misrepresentation, negligent misrepresentation,

<sup>1</sup> Blue Cross and Blue Shield of Illinois and Health Care Service Corporation are not separate legal entities. Rather, Blue Cross and Blue Shield of Illinois is a division of Health Care Service Corporation.

<sup>2</sup> The state court summons and civil case information sheet identify different case numbers, albeit it is the same case and case file.

equitable and promissory estoppel, quantum meruit, unjust enrichment, bad faith, and violations of the New Jersey Consumer Fraud Act.

2. **Diversity of Citizenship.** This action is removable under 28 U.S.C. §§1332, 1441, and 1446 inasmuch as the amount in controversy exceeds \$75,000.00 and is between parties with diverse citizenship. Plaintiff alleges that it is both a limited liability company organized under the laws of New Jersey with its principal place of business in New Jersey, with one member, who is a citizen of New Jersey and also alleges it is a New Jersey corporation run out of New Jersey.<sup>3</sup> [See Complaint ¶¶ 1, 9.] BCBSIL, on the other hand, is an Illinois company, with its principal place of business in Chicago, Illinois. [Ex. A.] Therefore, Plaintiff is a citizen of New Jersey, and BCBSIL is a citizen of Illinois, for removal and diversity purposes. The court can disregard ABC Companies and John Does for purposes of removal. *Balazik v. Cnty. of Dauphin*, 44 F.3d 209, 213, n.4 (3d Cir. 1995). There is complete diversity of citizenship between Plaintiff and BCBSIL at the time of filing suit and at the time of removal. [See Ex. A.] Plaintiff seeks \$136,754, trebled under the New Jersey Consumer Fraud Act, plus punitive damages. [Complaint ¶147; Prayer of Relief.] See *Jersey Shore Hair Inc. v. Hartford Ins. Co. of the Midwest*, CV2014250MASTJB, 2021 WL 7907241 at \*1 (D.N.J. June 21, 2021) (a defendant's notice need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold and must be based on a reasonable reading of the Plaintiff's complaint). Statutory claims for treble and multiple damages are included when assessing the amount in controversy. See *Estrumil LLC v. Am. Auto. Ins. Co.*, CV 20-15259 (WJM), 2021 WL 2073953 (D.N.J. Feb. 9, 2021) (punitive damages, treble damages, and attorney's fees are all properly considered in connection with the amount in controversy); see also *Suber v. Chrysler Corp.*, 104 F.3d 578 (3d Cir. 1997), as amended (Feb. 18, 1997) (the court

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<sup>3</sup> Plaintiff's business entity report on file from the Arizona Corporation Commission's website identifies one member of Plaintiff – Avraham Yosef Dina, whose address is listed in New Jersey. <https://ecorp.azcc.gov/EntitySearch/Index>.

should include treble damages and attorney's fees when calculating the amount in controversy). This Court therefore has original jurisdiction pursuant to 28 U.S.C. § 1332, and BCBSIL has shown by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *Yocham v. Novartis Pharm. Corp.*, CIV 07-1810 JBS, 2007 WL 2318493 (D.N.J. Aug. 13, 2007) (removal is proper because there is complete diversity of citizenship and it appears from the face of the complaint that the amount in controversy exceeds \$75,000.00).

3. **Removal is Timely.** Removal is timely under 28 U.S.C. § 1446(b) because BCBSIL was served with a copy of the Complaint on January 22, 2024. *See* 28 U.S.C. §1446(b) ("Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons . . . to file the notice of removal."). [*See Ex. F*]

4. **Removal is Proper.** Based on the foregoing, the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00, exclusive of interests and costs, and this action is between citizens of different states. Therefore, this action may be removed pursuant to 28 U.S.C. § 1441.

5. **State Court Documents Attached.** An index of matters filed in the state court action is attached hereto as Exhibit B - F. These documents constitute the only pleadings, process, or orders filed in the state court or received by BCBSIL.

6. **Notice.** Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal shall be provided to all adverse parties and filed with the clerk of the state court.

7. **Prayer.** Wherefore, BCBSIL respectfully requests that the United States District Court for the District of New Jersey accept this Notice of Removal and that it assumes jurisdiction of this cause and grant such other and further relief as may be necessary.

Dated: February 20, 2024

Respectfully submitted,

By: /s/ Louis P. DiGiaino  
Louis P. DiGiaino  
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**ATTORNEYS FOR DEFENDANT BLUE CROSS  
AND BLUE SHIELD OF ILLINOIS**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2024, a true and correct copy of the foregoing document was served via email on the following:

Afiyfa H. Ellington  
**ABIRA MEDICAL LABORATORIES, LLC D/B/A**  
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*Attorney for Plaintiff*

/s/ Louis P. DiGiaimo

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